

ETHICS ADVISORY 98-12 - Politics & the Federal Employee

Within the last month, I have received some inquiries about the ability of Federal employees to participate in the political process. Strictly speaking, the Hatch Act and the Office of Personnel Management Regulations implementing the Act are not Standards of Ethical Conduct issues. However, they do apply to employee conduct and may well have ethical implications, such as reporting positions on a financial disclosure report, gifts, and use/mis-use of Government resources and position. Accordingly, it seems appropriate to provide you with basic information about participation in the political process.

The Hatch Act and implementing OPM regulations (5 C.F.R. Parts 733 and 734) apply to civilian employees. The rules applicable to soldiers are more restrictive and are set out in DoD Directive 1344.10 and AR 600-20.

When the Hatch Act Reform Amendments went into effect on 3 Feb 94, greater latitude for participating in the political process was given to most Federal employees. Except for career appointees in the Senior Executive Service, Administrative Law Judges, and employees of specified agencies (e.g., FBI, CIA, NSA, IRS, and MSPB), Federal employees may now participate in partisan politics. However, there are still limits. What follows are lists of what most Federal employees may or may not do.

Federal employees covered by the 1993 amendments may

- be candidates for public office in nonpartisan elections
- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations
- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be an active member of a political party or club
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- hold office in political clubs or parties

Federal employees may *not*

- use official authority or influence to interfere with an election
- solicit or discourage political activity of anyone with business before their agency

solicit or receive political contributions (may be done in certain limited situations by federal labor
or other employee organizations)
be candidates for public office in partisan elections
wear political buttons on duty
engage in political activity while
on duty
in a government office
wearing an official uniform
using a government vehicle

Career employees of the Senior Executive Service are still covered by many of the pre-reform restrictions, *i.e.*, they may **not** participate in **partisan** political activities. They may voice opinions, sign a petition, and be politically active, but they may not be involved with partisan issues, groups and elections. They may be members of a political party and contribute money to it, and they may attend a political event. **but** they may **not** be actively involved in the management of a partisan organization, help organize or sell tickets to a fundraising event, or address a group in support of or in opposition to a candidate for a partisan political office.

Active duty military personnel are under different and more restrictive rules than civilian employees. For example, they may not make campaign contributions to other members of the Armed Forces or Federal employees. They also may not run for elective office in the Federal government, or the government of a state, territory, the District of Columbia, or any political subdivision thereon. (10 U.S.C. Sec. 973).

Finally, for those civilian employees residing in certain specified localities in Maryland (*e.g.* Bowie, Frederick County, Howard County, Prince George's County, Rockville), or Virginia (*e.g.* Arlington County, Fairfax County, Prince William County, Fairfax City, Vienna) or elsewhere (*e.g.* Benecia, CA, Elmer City, WA, Sierra Vista, AZ) there is some liberalization in the rules. If you live in one of these localities, and if you are not a career appointee in the SES (or a member of one of the specified agencies), you may:

run as an **independent candidate** for election to a partisan political office in elections for **local office**
solicit contributions for an **independent candidate** for election to a partisan political office in elections for **local office**
accept (but not solicit) contributions for a **partisan** political party candidate running for **local office**
solicit uncompensated volunteer service for a **partisan** political party candidate running for **local office**

There is some liberalization also for the career SES employees, but not as much.

If you are going to be politically active, you should have a copy of the regulations for your reference. Attached is 5 C.F.R. Part 734, *Political Activities of Federal Employees*. Subpart B sets out the permitted activities. Subpart C sets out the restrictions, except that, if you are an SES, then refer to Subpart D. Also attached is 5 C.F.R. Part 733, *Political Activity: Federal Employees Residing in Designated Localities*. Here again, you will find permitted activities (Section 733.103), prohibited activities (Section 733.104) and special rules for the SES'ers (Section 733.105).

I recommend that you let the political organization in which you intend to be active know about your status as a Federal employee. I think it is fair to expect the organization with which you are working to be sensitive to your status, to have a general understanding about the rules that apply to your status, and to help you with them. At the very least, the organization should refrain from specific expectations of you that would violate the rules. With respect to a particular issue, I or Alex Bailey can help you read through the rules so that you can arrive at a reasoned conclusion. However, note that **only** the **Office of Special Counsel** is authorized to render advisory opinions concerning the applicability of the rules to the political activity of Federal employees (5 C.F.R. Section 734.102). The OSC telephone number is (202) 653-7188 or 1-800-854-2824. The OSC address is:

Office of Special Counsel
1730 M Street NW, Suite 300
Washington, DC 20036

The OSC also has a webpage (<http://www.access.gpo.gov/osc/>) where you will find links to "Frequently Asked Questions," OSC's e-mail advisory opinion service, and other helpful information.

Let us know if we can help you further.

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